

South Australia

Real Property Variation Regulations 2016

under the *Real Property Act 1886*

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *Real Property Variation Regulations 2016*.

2—Commencement

These regulations will come into operation on 4 July 2016.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *Real Property Regulations 2009*

4—Variation of regulation 3—Interpretation

- (1) Regulation 3, definition of *check search*—after "any" wherever occurring insert:
instruments or
- (2) Regulation 3, definition of *check search*—after "registered" wherever occurring insert:
or recorded

5—Insertion of Part 3A

After Part 3 insert:

Part 3A—Client authorisations

11A—Prescribed circumstances

For the purposes of section 240F(2)(c) of the Act, the following circumstances are prescribed:

- (a) a legal practitioner or registered conveyancer executing any of the following:
 - (i) an application for title by possession to land under section 80A of the Act;
 - (ii) a notice of withdrawal of a priority notice under section 154E of the Act otherwise than under a client authorisation;
 - (iii) an application to extend the duration of a priority notice under section 154G(6) of the Act otherwise than under a client authorisation;
 - (iv) a disclaimer under section 169 of the Act;
 - (v) a notice of withdrawal of a caveat under section 191(1)(h) of the Act otherwise than under a client authorisation;
 - (vi) an instrument under the *Community Titles Act 1996*;
 - (vii) an instrument under the *Strata Titles Act 1988*;
- (b) a legal practitioner or registered conveyancer executing an instrument under an Act other than the *Electronic Conveyancing National Law (South Australia)* on behalf of the Crown under a delegation.

11B—Prescribed period for retaining client authorisation

For the purposes of section 240G of the Act, the prescribed period is 7 years from the date of the last action undertaken under the relevant client authorisation.

6—Variation of regulation 12—Certification requirements

- (1) Regulation 12—after paragraph (r) insert:
 - (s) documents registered or recorded by the Registrar-General under section 55 of the Act;
 - (t) applications for the division of land under section 223LD of the Act;
 - (u) applications for the division of land by a plan of community division under section 14 of the *Community Titles Act 1996*.
- (2) Regulation 12—before its present contents as amended by this regulation (now to be designated as subregulation (2)) insert:
 - (1) For the purposes of section 273(1)(d) of the Act, a prescribed person must, in relation to an application made under section 173(1)(a) of the Act, provide certification in the appropriate form that the lessor is in possession of a statement signed by the Official Receiver or trustee certifying the refusal of the Official Receiver or trustee to accept the lease.

7—Insertion of regulations 13A, 13B, 13C and 13D

After regulation 13 insert:

13A—Prescribed period for retaining documents relating to mortgage

- (1) For the purposes of section 128A(2) of the Act, a mortgagee must retain any document used for the purpose of fulfilling the mortgagee's obligations under section 128A(1) of the Act until he or she ceases to be mortgagee in respect of the mortgage.
- (2) For the purposes of section 152A(2) of the Act, a transferee must retain any document used for the purpose of fulfilling the transferee's obligations under section 152A(1) of the Act until he or she ceases to be mortgagee in respect of the transferred mortgage.
- (3) For the purposes of section 153B(2) of the Act, a mortgagee must retain any document used for the purpose of fulfilling the mortgagee's obligations under section 153B(1) of the Act until he or she ceases to be mortgagee in respect of the mortgage.

13B—Prescribed period for retaining certain documents under section 173 of Act

For the purposes of section 173(2) of the Act, a statement signed by the Official Receiver or by the trustee under a bankruptcy or assignment certifying his or her refusal to accept a lease under section 173(1)(a) of the Act must be retained by the lessor for a period of 7 years from the date of lodgement of the application under section 173(1)(a) of the Act.

13C—Prescribed instruments (section 191(2)(b) of Act)

For the purposes of section 191(2)(b) of the Act, the following kinds of instruments are prescribed:

- (a) an application for the removal, extension or withdrawal of a caveat;
- (b) a statutory order or an instrument cancelling a statutory order;
- (c) a statutory authorisation or an instrument cancelling a statutory authorisation;
- (d) an order of a court or an instrument of discharge of an order of a court;
- (e) an instrument of withdrawal or satisfaction of a warrant of sale;
- (f) a transfer consequential on a statutory charge, order or authorisation, a warrant of sale or the exercise of a statutory power of sale by a statutory body or officer;
- (g) an instrument lodged by the Crown;
- (h) an instrument relating to an interest in land that, in the opinion of the Registrar-General, would not affect the interest to which the caveat, or instrument that has the effect of a caveat, relates;
- (i) a statutory charge or an instrument discharging, removing or cancelling a statutory charge;
- (j) a heritage agreement, or an agreement varying or terminating a heritage agreement, under the *Heritage Places Act 1993* or the *Native Vegetation Act 1991*;
- (k) an agreement, or an instrument relating to the rescission or amendment of an agreement, under Part 5 of the *Development Act 1993*;
- (l) an instrument relating to an alteration to the South Australian Heritage Register under the *Heritage Places Act 1993*;
- (m) an instrument relating to the cessation or withdrawal of a worker's lien under the *Worker's Liens Act 1893*;

- (n) a notice or acquisition under the *Land Acquisition Act 1969*;
- (o) an environment performance agreement, or certification of the termination of an environment performance agreement, under the *Environment Protection Act 1993*;
- (p) an Aboriginal heritage agreement, or an agreement varying or terminating an Aboriginal heritage agreement, entered into under the *Aboriginal Heritage Act 1988*;
- (q) an access agreement, or an agreement for the variation of an access agreement, entered into under the *Recreational Greenways Act 2000*;
- (r) a management agreement, or an application relating to the rescission or amendment of a management agreement, entered into under the *River Murray Act 2003*;
- (s) an instrument amending or rescinding, or otherwise dealing with, a statutory encumbrance (within the meaning of Part 19AB of the Act) not otherwise mentioned in this regulation;
- (t) an application under the Act by a person to whom land has been transmitted for registration as proprietor of the land.

13D—Prescribed period for retaining documents under section 273AA of Act

For the purposes of section 273AA(2) of the Act, the prescribed period is 7 years from the date the instrument to be registered or recorded in the Register Book or the Register of Crown Leases is lodged in the Lands Titles Registration Office.

8—Variation of regulation 16—Fees payable to Registrar-General

Regulation 16—after subregulation (2) insert:

- (2a) If the assessed value is increased as a result of a reassessment by the Commissioner under section 10 of the *Taxation Administration Act 1996*, the following amounts are recoverable as a debt by the Registrar-General:
 - (a) an amount equal to the difference between the registration fee paid and the registration fee that would have been payable in accordance with the reassessed value;
 - (b) interest on the amount underpaid calculated on a daily basis from the date of lodgment of the transfer for registration until the date on which the payment is made at the market rate applying from time to time under Part 5 Division 1 of the *Taxation Administration Act 1996*.

9—Insertion of Part 6

After Part 5 insert:

Part 6—Transitional provisions—*Real Property (Electronic Conveyancing) Amendment Act 2016*

17—Interpretation

In this Part—

amendment Act means the *Real Property (Electronic Conveyancing) Amendment Act 2016*.

18—Execution of instruments

If an instrument or document is executed, signed, witnessed or attested for the purposes of the Act in a manner that satisfies the requirements for execution, signing, witnessing or attestation under the Act as in force immediately before the commencement of Part 2 of the amendment Act, the instrument or document will, until 4 November 2016, be taken to satisfy any requirement of the Act relating to the execution, signing, witnessing or attestation of the document or instrument.

19—Appropriate form

- (1) An instrument or document (other than a mortgage or a discharge of mortgage) in a form that accords with the appropriate form under an approval by the Registrar-General in respect of that instrument or document in force immediately before the commencement of Part 2 of the amendment Act will, until 4 November 2016, be taken to satisfy any requirement under the Act for the instrument or document to be in the appropriate form.
- (2) A mortgage or discharge of mortgage in a form that accords with the appropriate form under an approval by the Registrar-General in respect of that mortgage or discharge of mortgage in force immediately before the commencement of Part 2 of the amendment Act will, until 4 July 2017, be taken to satisfy any requirement under the Act for the mortgage or discharge of mortgage to be in the appropriate form.

20—Fee for application for substituted certificate (section 79 of Act)

Any fee paid for an application under section 79(1) of the Act that has not been determined before the repeal of that section by the amendment Act is to be refunded to the applicant.

21—Transfers (section 96 of Act)

A transfer executed and certified as being correct before 4 November 2016 in accordance with the requirements of the Act as in force immediately before the commencement of Part 2 of the amendment Act will be taken to have satisfied the requirements of sections 96 and 273 of the Act as in force after that commencement.

22—Mortgage taken to be on the same terms (section 128 of Act)

For the purposes of section 128(5)(a) of the Act, a mortgage executed before 4 July 2017 that complies with the requirements of Part 12 of the Act as in force immediately before the commencement of Part 2 of the amendment Act will, if it has the same effect as a mortgage lodged for registration in the Lands Titles Registration Office, be taken by the Registrar-General to be on the same terms as the lodged mortgage.

23—Instrument taken to be on the same terms (section 153A of Act)

For the purposes of section 153A(3) of the Act, an instrument executed before 4 July 2017 that complies with the requirements of Part 13 of the Act as in force immediately before the commencement of Part 2 of the amendment Act will, if it has the same effect as an instrument lodged for registration in the Lands Titles Registration Office, be taken by the Registrar-General to be on the same terms as the lodged instrument.

24—Summons of person having possession of duplicate instrument (section 220(c) of Act)

A summons issued by the Registrar-General under paragraph (c) of section 220 of the Act before the repeal of that paragraph by Schedule 2 of the amendment Act is void and of no effect.

25—Modification of certification requirements (section 273 of Act)

- (1) Despite the certification requirements of section 273(1) of the Act (as substituted by section 85 of the amendment Act), the Registrar-General may, until 4 November 2016—
 - (a) register or record an instrument purporting to deal with or affect land if a prescribed person within the meaning of section 273(4) of the Act has provided a certificate to the Registrar-General, in the appropriate form and signed by the person, certifying that the instrument is correct for the purposes of the Act; and
 - (b) register a mortgage if the mortgagee has provided certification in the appropriate form that the instrument is correct for the purposes of the Act; and

- (c) register a transfer of a mortgage if the transferee has provided certification in the appropriate form that the instrument is correct for the purposes of the Act; and
 - (d) register a renewal or extension of a mortgage if the mortgagee has provided certification in the appropriate form that the instrument is correct for the purposes of the Act.
- (2) Certification under this regulation must be provided by a natural person who is reasonably satisfied as to the matters to which he or she is certifying.
 - (3) If the mortgagee or transferee referred to in subregulation (1) is a body corporate that is a mortgagee or transferee, the certification may be given by an employee of the body corporate who is reasonably satisfied as to the matters to which he or she is certifying.

10—Variation of Schedule 1—Fees payable to Registrar-General

- (1) Schedule 1, item 9—delete item 9
- (2) Schedule 1, item 12(a)—delete "an original certificate" and substitute:
a certificate
- (3) Schedule 1, item 13(a)—delete "or a substituted lessee's copy of a Crown lease or duplicate certificate of title"
- (4) Schedule 1, item 27—delete "original" wherever occurring
- (5) Schedule 1, item 28(c)—delete "original"
- (6) Schedule 1, item 30—delete item 30
- (7) Schedule 1—after item 39 insert:

40	For providing a lodgement support service suite in respect of electronic lodgement (known as LSS 1) consisting of—	\$14.00
	(a) supply of title data for completion of electronic document forms	
	(b) unlimited title activity checks	
	(c) unlimited lodgement verifications for lodgements which reference title	
41	For providing a lodgement support service suite in respect of electronic lodgement (known as LSS 2) consisting of—	\$11.00
	(a) supply of title data for completion of electronic document forms	
	(b) unlimited lodgement verifications, for lodgements which reference title	
42	For providing a lodgement support service suite in respect of electronic lodgement (known as LSS3) consisting of the resupply of title data for electronic documents forms if original data for the title has already been supplied	no fee

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 30 June 2016

No 173 of 2016

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